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In The Supreme Court of the United States

ROBERT FORD HALL,

Petitioner,

v.

MILTON E. NIX, JR.; GARFIELD HAMMONS, JR.; BETTY ANN COOK; EUGENE P. WALKER; J. MICHAEL LIGHT; AND MICHELLE MARTIN,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does Ex Post Facto prohibit members of the Georgia parole agency from retroactively enforcing an unpublished ninety percent to serve policy foreclosing Petitioner and similarly situated inmates of any meaningful consideration for release on parole before serving de facto ninety percent of their sentences and retroactively substantially increasing their sentences to serve beyond their likely release on parole in accordance with the enacted parole laws in effect at the time of commission of their offenses after serving one-third of their judicial sentences and the months to serve calculated under statutorily mandated Parole Decision Guidelines?

2. Does the retroactive application of an unpublished ninety percent to serve policy by the Georgia parole agency that substantially extends sentences to serve beyond the enacted parole laws and parole decision guidelines without fair legal warning also violate Due Process?

3. Are Due Process and the Federal Rules of Civil Procedure violated when the Petitioner is denied discovery necessary to prove his case that is secreted exclusively in the files of the Georgia parole agency?

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The Opinion of the United States Court of Appeals for the Eleventh Circuit, September 13, 2005, affirming the granting of summary judgment for the Respondents is set forth in the Appendix at A-1. The Order of the United States District Court for the Northern District of Georgia, November 1, 2004, granting summary judgment for the Respondents is set forth in the Appendix at A -5. The Order of the United States District Court for the Northern District of Georgia, June 23, 2004, denying Petitioner's Motion for equitable relief and denying Petitioner's Motion for Writ of Habeas Corpus is set forth in the Appendix at A-12. The order of the United States District Court for the Northern District of Georgia, May 29, 2002, holding the retroactive application of the Georgia parole agency's unpublished ninety percent to serve policy extending sentences to serve in violation of Ex Post Facto protections of the United States Constitution is set forth in the Appendix at A-18.

JURISDICTION

The final judgment of the United States Court of Appeals for the Eleventh Circuit was rendered on September 13, 2005. The statutory provision conferring jurisdiction on the Supreme Court of the United States to review on a Writ of Certiorari is 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE I. SECTION 9. No...ex post facto law shall be passed.

ARTICLE I. SECTION 10. No State... shall pass any...ex post facto Law...

AMENDMENT V. No person shall be held to answer ... nor be deprived of life, liberty, or property without due process of law;

AMENDMENT XIV. SECTION I. ...nor shall any State deprive any person, of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

STATEMENT OF THE CASE

The sentence to serve of Petitioner Robert Ford Hall ("Petitioner") has been retroactively substantially extended by the Georgia State Board of Pardons and Paroles ("Board") applying a de facto ninety percent to serve policy in violation of Ex Post Facto beyond the time that he should have been released on parole under the enacted parole laws and the legislatively mandated Parole Decision Guidelines in effect at the time of commission of his offense. The Plaintiff has been required to be incarcerated substantially longer than his sentence to serve under the parole laws and Parole Decision Guidelines in effect at the time of commission of his offense and the admittedly unconstitutional retroactive increases in his punishment have been continued in subsequent "reconsiderations."

The statutory parole laws in Georgia provide for eligibility for parole after serving one-third of judicial sentences pursuant to O.C.G.A. § 42-9-45 (b) and the months to serve calculated according to the parole decision guidelines pursuant to mandate of O.C.G.A. § 42-9-40 (a). The statutorily parole laws provide for denial of release on an objective determination on an individual basis that an inmate's release on parole would not be compatible with the inmate's own welfare or the welfare of society pursuant to O.G.C.A. § 42-9-42 (c).

After a legislative attempt failed to enact a requirement that all violent offenders serve their entire judicial sentences, in order to satisfy the eighty-five percent of judicial sentences to serve requirement of the Violent Offenders Incarceration – Truth In Sentencing Act ("VOITIS"), 42 U.S.C. § 13704, *et seq.* to qualify for federal grant funds to build new prisons, the Georgia Board adopted an unpublished resolution that all inmates in twenty violent and residential burglary offender categories must serve ninety percent of their judicial sentences. The sentencing

laws in Georgia provide for sentences which are substantially longer than most states sentencing laws and guidelines because the statutory parole laws contemplate that deserving inmates will be released after serving one-third of their judicial sentences or the months to serve calculated under the parole decision guidelines. Rather than reducing the sentencing periods as other states did in order to comply with the 85% requirement for funding pursuant to VIOTIS, Georgia went the other way and required that inmates in seven most serious violent offender categories serve mandatory sentences without parole, but when a similar legislative attempt failed to increase sentences to serve for other violent felonies, the Board adopted and retroactively implemented an unpublished "policy" that all offenders in twenty other violent offense and residential burglary categories must serve ninety percent of their judicial sentences before being practically eligible for release on parole.

This unpublished policy had an unpublished "effective date" of January 1, 1998, but the Board slavishly applied the ninety percent to serve policy retroactively to inmates including Petitioner whose offenses were prior to January 1, 1998 to practically foreclose any parole until the inmates in the listed categories had served ninety percent of their sentences.

On May 29, 2002 United States District Court Judge William C. O'Kelley in *Coleman Jackson v. State Board of Pardons and Paroles*, United States District Court for the Northern District of Georgia, Civil No. 2:01-CV-068-WCO, held unconstitutional in violation of Ex Post Facto prohibitions the retroactive application to plaintiff Coleman Jackson of the unpublished policy of the Board which substantially extended Georgia inmates' sentences to serve to at least ninety percent of their judicial sentences. (A-18). Judge O'Kelley ordered the individual members of the Board (Respondents herein) to immediately consider the plaintiff

Coleman Jackson for parole without regard to the ninety percent to serve policy. (A-44). The Board did not appeal Judge O'Kelley's Order holding the retroactive application of the ninety percent to serve policy unconstitutional and the Board thereafter released Coleman Jackson on parole.

The staff of the Board automatically and slavishly applied the ninety percent to serve policy to 8,664 cases from January 1, 1998 through June 30, 2001 and except for 10 special prosecutorial deals, all inmates in the twenty categories were foreclosed from being considered for parole until they had served the ninety percent threshold. (Order of Judge O'Kelley, May 29, 2002, at A-36). The representative of the Board testified that the updated number of inmates under the ninety percent to serve policy was at least 10,000 with only 18 being released on parole serving less than ninety percent and these were substantially all prosecutorial deals. (Sullivan Deposition, p 16).

As a result of Judge O'Kelley's holding the retroactive application of the ninety percent to serve policy unconstitutional, the members of the Board adopted a Resolution Amendment, dated September 9, 2002, acknowledging the illegality of the retroactive application of the ninety percent to serve policy and provided for reconsideration of parole for all inmates whose offenses were committed before January 1, 1998 who "shall be considered for parole under the Parole Decision Guidelines that do not include the ninety percent policy.

However, the Defendants as members of the Board did not reconsider Petitioner Hall or any of the other similarly situated inmates under the Parole Decision Guidelines. In spite of the Respondent Board members committing to reconsider inmates under the Parole Decision Guidelines, they did not follow the Parole Decision Guidelines for the Petitioner or in a single case of similarly situated inmates The Respondents only gave lip service that